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CARRIERS—EXTENT OF LIABILITY FOR BAGGAGE UNACCOMPANIED BY PASSENGER.—The plaintiff purchased a ticket to her destination on the defendant's railway and checked her baggage on the ticket. She later decided to take a different route and destroyed the passenger ticket. The baggage was stolen without fault of the defendant. In an action for its value, the defendant pleaded that its liability was only that of a gratuitous bailee. *Held,* that the defendant was liable as an insurer. *Caine v. Cleveland, etc. Ry.* (1921, Mich.) 185 N. W. 765.

It has now become well settled that a carrier is liable for the loss or destruction of baggage as an insurer, even though the owner does not travel on the same train. *St. Louis, etc. Ry. v. Dewitt* (1914) 115 Ark. 578, 171 S. W. 906; *Larned v. Central Ry.* (1911) 81 N. J. L. 571, 79 Atl. 289; *McKibben v. Wisconsin Cent. Ry.* (1907) 100 Minn. 270, 110 N. W. 964; (1912) 46 AM. L. REV. 264; (1911) 9 MICH. L. REV. 707. The ancient rule originated in stage-coach days when baggage was carried as a matter of grace and no checking system existed. It was obviously not an unjust requirement, in view of the methods of transportation, that the passenger accompany his own baggage. *Collins v. Boston & Me. Ry.* (1852, Mass.) 10 Cush. 506. And the rule is still necessary in England, where the passenger is required to identify his luggage at the end of the journey. A situation which has raised more difficulty exists where the owner checks his baggage on a ticket which he never intends to use. The few adjudicated cases on the point have held that the carrying of baggage is incidental only to the carrier and passenger relation and that in purchasing a ticket there is an implied promise to become a passenger. *Marshall v. Pontiac, etc. Ry.* (1901) 126 Mich. 45, 85 N. W. 242; *Wood v. Maine Cent. Ry.* (1903) 98 Me. 98, 56 Atl. 457; *Lusk v. Bloch* (1917, Okla.) 168 Pac. 430. It has also been suggested that such a practice may convert passenger trains into fast freight trains (1914) 50 CAN. L. JOUR. 140; (1914) 78 CENT. L. JOUR. 55. On the other hand it has been considered illogical to reduce the liability of a carrier to that of a gratuitous bailee merely because the owner did not intend to or did not impose the additional burden of carrying him as a passenger. See *Ala. Great So. Ry. v. Knox* (1913) 184 Ala. 485, 63 So. 538. The court, in the instant case, does not expressly overrule *Marshall v. Pontiac, supra,* but sees a distinction in that there was an element of deceit in that case, the plaintiff never having intended to ride as a passenger. Still it is doubtful whether, in view of modern usage and the demands of transportation, the earlier decisions will stand.

EVIDENCE—POWER OF COURT TO ORDER PHYSICAL EXAMINATION OF PLAINTIFF.—The court was empowered by statute to order the physical examination of the plaintiff in an action for personal injuries. N. Y. C. C. P. sec. 873 (C. P. A. sec. 306). A blood test was considered necessary to determine the nature of the injury. The plaintiff objected on the ground that an infection might be caused by the needle in making the puncture required to draw the blood. *Held,* that the court could properly order the plaintiff to submit to such a blood test. *Hayt v. Brewster, Gordon & Co.* (1921) 199 App. Div. 68, 191 N. Y. Supp. 176.

Ever increasing litigation over personal injuries renders important the power of the courts to order the plaintiff to submit to a physical examination for the purpose of determining the nature and extent of the injury. The end sought by allowing an examination is, of course, a nearer approach to the truth. It is clear that in the absence of such a power, there is more room for fraud and the ascertainment of truth becomes practically impossible. In the absence of statute, the authorities are in square conflict as to whether the power exists. The weight of authority, at least in the number of decisions, seems to recognize such a power. 3 Wigmore, *Evidence* (1904) sec. 2220; *Schroeder v. Chicago, etc. Ry.* (1877) 47 Iowa, 375; *Wanek v. Winona* (1899) 78 Minn. 98, 80 N. W. 851; *Cincinnati, etc. Ry. v. Nolan* (1914) 161 Ky. 205, 170 S. W. 650; *Williams v. Chattanooga Iron Works* (1915) 131 Tenn. 683, 176 S. W. 1031; *State v. Troup* (1915) 98 Neb.

333, 152 N. W. 748; *contra, Union Pac. Ry. v. Botsford* (1891) 141 U. S. 250, 11 Sup. Ct. 1000; *Larson v. Salt Lake City* (1908) 34 Utah, 318, 97 Pac. 483. Several jurisdictions, in which this power was denied, have remedied the defect by statute. N. Y. C. P. A. 1921, sec. 306; N. J. Comp. Sts. 1910, sec. 19; Fla. Rev. Gen. Sts. 1919, sec. 4968. Once the power is recognized, either by statute or at common law, the extent to which it may be applied depends necessarily upon the wording of the statute, if a statute exists, or upon the particular facts of each case. Whether or not a physical examination in a particular case is necessary may properly be left to the discretion of the court; as may also the question of probable physical harm to the plaintiff. *Ottawa v. Gilliland* (1901) 63 Kan. 165, 65 Pac. 252; *Wanek v. Winona, supra; Atkinson v. United Rys. Co.* (1921, Mo.) 228 S. W. 483; *City of Valparaiso v. Kinney* (1921, Ind.) 131 N. E. 237; *Stearns Coal & Lumber Co. v. Williams* (1917) 177 Ky. 698, 198 S. W. 54. Analogous to this power is that conferred on health officers to examine any person whom they have reasonable cause to believe to be infected with a venereal disease. *Rock v. Carney* (1921, Mich.) 185 N. W. 798. With a proper exercise of discretion in cases of this kind, and a reasonable degree of care by the courts in ordering physical examinations, there is little if any danger of causing unnecessary embarrassment or physical harm to a plaintiff. The instant case is an excellent example of a usual and sound exercise of discretion by the court. Considering the conditions which prevail in present day medical practice, it can hardly be seriously contended that submitting to a simple blood test involves any real danger.

FUTURE INTERESTS—ESTATE IN FEE TAIL AS CONTINGENT REMAINDER—DESTRUCTIBILITY.—T devised certain lots to A for life, remainder to B and the heirs of his body, other land to B and the heirs of his body, and, in the event of B dying without any children surviving him, all property devised to B to be divided among certain nephews and nieces. B acquired A's life interest by quit-claim deed and also procured quit-claim deeds from the nephews and nieces. B then conveyed his entire interest to C who reconveyed to B. B had no children, was the sole heir of T, and held the reversion. By statute estates in fee-tail were changed into a life estate in the donee with a remainder in fee to the person to whom the estate tail would first pass at common law. Hurd's Ill. Rev. Sts. 1919, ch. 30, sec. 6. B brought a bill to quiet title. *Held,* that the estates limited to B's children and to the nieces and nephews were contingent remainders and were destroyed by the merger of the life estate and reversion through the conveyance to C. *Edmiston v. Donovan* (1921, Ill.) 133 N. E. 237.

At common law B's estate would have been a fee tail and the subsequent limitations indestructible executory devises. Changed by statute into a life estate with a remainder in fee to the person to whom the estate tail would first pass according to common law on the death of B, the remainder is contingent until such a person is born and consequently at common law destructible by failure of the particular estate. See Kales, *Later History of the Rule of Destructibility of Contingent Remainders* (1919) 28 YALE LAW JOURNAL, 656. For a discussion of such statutes and their operation, see Kales, *Future Interests* (2d ed. 1920) secs. 402-405. A life estate is destroyed by merger when the life estate and reversion come together in the hands of the same party, there being no vested intervening remainder, except where the two estates are created by the same instrument. A conveyance by the holder of the two estates to a third party will thus effect a merger, as in the instant case. See Kales, *Future Interests,* sec. 311; 1 Tiffany, Real Property (1920 ed.) sec. 34; see *McCullough v. Carpenter* (1921, Mo.) 225 S. W. 674. Contingent remainders are now preserved by statutes in many states. See Kales, *Future Interests,* sec. 106; 1 Tiffany, *op. cit.* secs. 177, 178. Such a statute has recently been enacted in Illinois. Laws, 1921, p. 470. But the court refused to hold it retroactive. After birth of issue of the donee in tail, the remainder is